IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Chuttan Lal vs. Khem Chand

S.B.Civil First Appeal No.57/1990 under Section 96 C.P.C. against the judgment and decree dated 27.11.1989 passed by Shri Ashkaran Prajapat RHJS, Additional District Judge No.7, Jaipur City, Jaipur in Civil Suit No.78/1988.

Date of Judgment :::::: April 24, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.R.P.Agarwal for appellant.

BY THE COURT (ORAL):-

The facts leading to this appeal in brief are that the plaintiff appellant instituted a suit against the defendant for recovery of Rs.30,861/-. It was mentioned that on 21.12.1981 the defendant borrowed Rs.30861/- from the plaintiff and executed a document on the same day. The defendant was to repay the loan amount at the shop of the

plaintiff but despite demands, the defendant failed to repay the loan amount. It was mentioned that despite service of a notice through advocate on 7.7.1983, the defendant failed to repay the loan amount. Thus, the suit was filed for recovery of Rs.30861/-.

In the written statement, the defendant respondent denied the fact of borrowing Rs.30861/-. In addition to it, the defendant took objection regarding maintainability of the suit in court at Jaipur, mentioning therein that he is residing and doing his business at Bombay and further the stamp in question was alleged to be purchased from Bombay. It was also mentioned that the plaintiff is engaged in money lending without any license thus, in absence of money lending licence, the suit is not maintainable. In these circumstances, it was prayed that the suit of the plaintiff be dismissed with costs and compensation of Rs.5,000/-.

In the rejoinder, the plaintiff came with the plea that the defendant is having his business at Bombay as well as at Jaipur and is residing at Jaipur. It was then mentioned that as the document was executed at Jaipur, the court at Jaipur is having jurisdiction to try the suit.

On the basis of pleadings of the parties, the trial

court framed as many as seven issues.

In support of his case, the plaintiff examined himself as PW.1 and also got examined Ram Narayan PW.2. In defence, the defendant examined himself as DW.1 and also got examined DW 2 Jawala Prasad.

Learned counsel for the appellant contended that the trial court has neither properly appreciated nor critically examined the evidence of the plaintiff and seriously erred in law and fact in deciding issue Nos.1 and 2. It is also contended that the learned trial court has not properly considered the fact that the stamp paper on which the document was executed, was supplied by the defendant and once execution of document has been proved by the plaintiff, the date of purchase of stamp is immaterial.

After hearing learned counsel for the appellant, I have gone through the impugned judgment and the material available on record.

The document is alleged to have been executed between the parties on 21.12.1981 at Jaipur. But a glance at the stamp makes clear that it was purchased from Bombay on 21.12.1981. According to the plaintiff the defendant had

purchased the stamp in advance but has not produced any evidence to support his case. There is no such pleading in the suit that the defendant purchased the stamp of advance date. Had he purchased the stamp of advance date, the plaintiff should have examined the stamp vendor to substantiate his plea that he had purchased the stamp of advance date, but he failed to do so. That apart, the plaintiff has also failed to prove the important fact that the disputed document was executed at Jaipur. The plaintiff has also not produced and examined Baijnath, the writer of the document to prove t that the disputed document was executed at Jaipur on 21.12.1981 on the stamp which was purchased from Bombay on 21.12.1981 itself. In my considered view, the stamp purchased on 21.12.81 at Bombay in any event could not have been taken use of at Jaipur on the same day unless it is proved by evidence that the stamp was brought to Jaipur by air. In the circumstances, therefore, it must be concluded that the learned trial court while recording findings on issues No.1 and 2 has appreciated the evidence in true perspective. Hence the judgment and decree impugned in this appeal call for no interference.

For the discussions above, the first appeal fails and is, hereby dismissed.

(K.C.Sharma),J.

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